

FILED - SOUTHERN DIVISION
CLERK, U.S. DISTRICT COURT

APR - 6 2012

CENTRAL DISTRICT OF CALIFORNIA
BY *snj* DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

CHARLES ALLEN MOFFAT,

Petitioner,

v.

TERRI GONZALEZ, Warden,

Respondent.

Case No. EDCV 11-01144 JFW (AN)

ORDER ACCEPTING THE FINDINGS
AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the file, including the Magistrate Judge's Report and Recommendation ("R&R") and Petitioner's Objections (dkt. 26). Further, the Court has completed a *de novo* review of those portions of the R&R to which Petitioner has objected.

IT IS ORDERED that:

1. Petitioner's Objections are overruled and the Court accepts the findings and recommendation of the R&R. Contrary to Petitioner's assertion, the Magistrate Judge correctly and accurately addressed the only two claims raised in the Second Amended Petition, and merely did so out of sequential order for purposes of logic and cohesion. In particular, the Court rejects Petitioner's frivolous attempt to re-characterize and misconstrue his claims to include new allegations based on an alleged prosecutorial discovery violation (Objections at 2-8). The Court also declines to consider these purported new allegations because Petitioner failed to raise them in his Second Amended Petition. *See United States v. Howell*, 231 F.3d 615, 621-23 (9th Cir. 2000). The Court finds the Objections reiterate arguments already made in the Second Amended Petition, which lack merit for the reasons that are discussed and explained

1 in the R&R.

2 2. Judgment shall be entered denying the Second Amended Petition and
3 dismissing this action with prejudice.

4 3. All motions are denied as moot and terminated.

5 IT IS FURTHER ORDERED that the clerk of the Court shall serve a copy of this
6 Order and the Judgment on all counsel or parties of record.

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9 Dated: April 4, 2012



JOHN F. WALTER
UNITED STATES DISTRICT JUDGE